

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KERWIN D. SCOTT,	)	
	)	
Plaintiff,	)	Case No.: 4:10-CV-01798-TCM
	)	
v.	)	
	)	
PAUL ARNETT, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

Defendants Paul Arnett, Rita Lay, and Elijah McGee removed this action to this Court on September 27, 2010. On October 8, 2010, plaintiff Kerwin Scott filed a motion "contesting removal to U.S. District Court", which appears to be a motion for remand pursuant to 28 U.S.C. §1447(c). For the following reasons, this Court should deny plaintiff's motion.

In support of his motion, plaintiff alleges that the incident giving rise to his action occurred in St. Louis County and therefore the Circuit Court of St. Louis County has subject matter jurisdiction over the action. Plaintiff further contends that this Court lacks subject matter jurisdiction because he filed his action pursuant to Mo.R.Civ.P. 99 and he has not yet exhausted his remedies under state law. Plaintiff's motion contesting removal, p.2, ¶¶1 and 2.

Plaintiff's argument ignores allegations set forth in his own pleading. Plaintiff invoked a federal statute, 18 U.S.C. §242, as a basis for his claim. Complaint, p.1(a), ¶1. In addition, plaintiff invoked the provisions of the Fourth and Fourteenth Amendments to the Constitution of the United States as additional bases for his action against defendants. Complaint, p.1(a), ¶¶1, 2, 3; p.4, ¶4; p.9, ¶14, and unnumbered paragraphs under "Conclusion of Facts and Law." Having

invoked provisions of federal law in support of his action, plaintiff cannot now claim that this Court lacks subject matter jurisdiction over his action. To the contrary, this Court has original jurisdiction over the federal claims in plaintiff's action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). The fact that plaintiff has also invoked provisions of Missouri law does not require remand of this action because the claims under Missouri law are within this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

For the foregoing reasons, there is no basis in law for plaintiff's motion to remand this case to state court. Accordingly, this Court should deny plaintiff's motion.

Respectfully submitted,

KING, KREHBIEL, HELLMICH, HACKING  
& BORBONUS, LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2010 a copy of the foregoing was served via First Class U.S. Mail, postage prepaid, upon:

Kerwin D. Scott  
South Central Correctional Center  
255 West Hwy 32 \*\*6-A-117  
Licking, MO 65542  
***Plaintiff, pro se***

/s/ Robert J. Krehbiel  
Robert J. Krehbiel